

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS - KANSAS CITY CARPENTERS)
REGIONAL COUNCIL, et al.,)

Plaintiffs,)

vs.)

UNK FLOORING, LLC,)

Defendant.)

Case No. 4:17-CV-01661-JAR

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Motion to Compel Discovery. (Doc. No. 25). Plaintiffs seek to compel a representative of Defendant UNK Flooring, LLC, to appear for a post-judgment deposition and produce the records requested in Plaintiffs' notice of deposition. No response to the motion has been filed. For the following reasons, the motion will be granted.

Background

Plaintiffs filed this action on June 14, 2017, to recover from Defendant UNK Flooring, LLC ("UNK Flooring") delinquent fringe benefit contributions pursuant to Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132 ("ERISA"). Default judgment was granted in favor of Plaintiffs on March 28, 2018, in the amount of \$62,646.64. (Doc. No. 17).

Motion to Compel

Plaintiffs' motion to compel and the affidavit of attorney Nancy K. Gilbert assert that on September 5, 2018, Plaintiffs sent a notice of post-judgment deposition to UNK Flooring. The notice required the attendance of a representative of UNK Flooring at the offices of Plaintiffs'

counsel on October 10, 2018, at 10:00 a.m., and the simultaneous production of requested documents relevant to Plaintiffs' efforts to collect the judgment in this case. No representative of UNK Flooring appeared at the deposition or otherwise contacted Plaintiffs' counsel.

Rule 69(a) of the Federal Rules of Civil Procedure provides that the "process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise." Fed. R. Civ. P. 69(a). Rule 69 further provides that the procedure on execution, and in proceedings in aid of execution, "shall be in accordance with the practice and procedure of the state in which the district court is held . . . except that any statute of the United States governs to the extent that it is applicable." *Id.* Finally, Rule 69 provides that in aid of a judgment or execution, a judgment creditor "may obtain discovery from any person, including the judgment debtor, in the manner provided in [the Federal Rules of Civil Procedure] or in the manner provided by the practice of the state in which the district court is held." *Id.* In the absence of a controlling federal statute, a district court "has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law." *Carpenters' District Council of Greater St. Louis and Vicinity v. Vehlewald Const. Co.*, 2008 WL 544977, at * 1-2 (E.D. Mo. Feb. 25, 2008) (quoting *H.H. Robertson Co. v. V.S. DiCarlo Gen. Contractors, Inc.*, 994 F.2d 476, 477 (8th Cir. 1993)).

Plaintiffs seek to take a post-judgment deposition in aid of execution of their judgment. This procedure is appropriate pursuant to Rules 69(a) and 30 of the Federal Rules of Civil Procedure. It appears to the Court from the affidavit of Plaintiffs' counsel that UNK Flooring was properly noticed for deposition but failed to appear. Plaintiffs' motion to compel should therefore be granted, and a representative of UNK Flooring will be ordered to appear for

deposition at the offices of Plaintiffs' counsel, and produce the requested documents at the same time.


Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Compel Discovery (Doc. No. 26) is **GRANTED**.

IT IS FURTHER ORDERED that a representative of Defendant UNK Flooring, LLC shall appear for a post-judgment deposition and produce the records requested in the notice of deposition dated September 5, 2018, at the offices of Plaintiffs' counsel on **December 12, 2018**, at **10:00 a.m.**

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this order to Defendant UNK Flooring, LLC, 3515 St. Catherine Street, Florissant, MO 63031.

Dated this 27th day of October, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE